

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. DAUGHERTY, JR.

Appeal No. 2002-1822
Application No. 09/197,164

ON BRIEF

Before COHEN, ABRAMS, and FRANKFORT, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 31, all of the claims pending in this application.

Appellant's invention relates, in general, to a railway coupling device and, more particularly, to connection assemblies for use in articulated coupling arrangements and slackless drawbar assemblies which are used in the railway industry to couple together the adjacently disposed ends of a pair of railway

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type freight cars in a substantially semi-permanent fashion.
Independent claims 1 and 20 are representative of the subject
matter on appeal and a copy of those claims can be found in the
Appendix to appellant's brief.

The prior art references of record relied upon by the
examiner in rejecting the appealed claims are:

Bogue	3,843,962	Oct. 22, 1974
Kanjo et al. (Kanjo)	5,042,393	Aug. 27, 1991
Wallace et al. (Wallace '679)	5,065,679	Nov. 19, 1991
Narkon et al. (Narkon)	5,110,221	May 5, 1992
Daughterety, Jr. et al. (Daughterety '819)	5,172,819	Dec. 22, 1992
Yamazumi et al. (Yamazumi)	5,271,679	Dec. 21, 1993

Claims 1 through 8, 11 through 15 and 20 through 31 stand
rejected under 35 U.S.C. § 103(a) as being unpatentable over
Wallace '679 in view of Narkon.

Claims 1 through 8, 11 through 15 and 20 through 31 also
stand rejected under 35 U.S.C. § 103(a) as being unpatentable
over Daughterety '819 in view of Narkon.

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Claims 16 through 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kanjo in view of Narkon.

Claims 9 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 in view Narkon as applied to claim 1 above, and further in view of Bogue.

Claims 9 and 10 additionally stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Daugherety '819 in view of Narkon as applied to claim 1 above, and further in view of Yamazumi.¹

¹ It appears to us that the above-noted rejections based on Daugherety '819 and Kanjo are merely cumulative and superfluous since the disclosures of these two patents appear to add nothing of significance that is not already disclosed in Wallace '679. The examiner's statement of the differences between the applied prior art references and the claimed subject matter is essentially identical in each of the rejections based on Wallace '697, Daugherety '819 and Kanjo, as is the examiner's statement regarding the teachings of Narkon and each of the statements supporting the examiner's conclusion of obviousness. It would seem the examiner would be well served to review MPEP § 706.02, wherein it is noted that cumulative rejections like those above should be avoided.

Rather than reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by appellant and the examiner regarding those rejections, we make reference to the examiner's answer (Paper No. 14, mailed February 8, 2002) for the reasoning in support of the rejections², and to appellant's brief (Paper No. 13, filed January 15, 2002) and reply brief (Paper No. 15, filed April 15, 2002) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determinations which follow.

² While the examiner's answer (page 11) appears to make note of an appeal conference being held, we observe that the conferees have not initialed next to the typed indication of the conferees initials in the examiner's answer as required in MPEP § 1208, which indicates that the typed or printed names of the conferees should appear on the answer below the primary examiner's signature and that the conferees "must place their initials next to their name."

In rejecting claims 1 through 8, 11 through 15 and 20 through 31 under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 in view of Narkon, the examiner has urged (answer, page 3) that Wallace '679 teaches all the limitations of claims 1-8, 11-15 and 20-31 except for a connection assembly with a retainer member engageable with at least a portion of the inner surface of a male connecting member forming a substantially spherical inner surface including a portion of the inner surface of the male connection member. To account for this difference, the examiner turns to Narkon, pointing to Figure 2 and urging that this patent teaches use of a retainer member engageable with at least a portion of the inner surface of a male connecting member forming a substantially spherical inner surface including a portion of the inner surface of the male connection member in an articulate joint assembly.³ From these teachings, the

³ Although the examiner does not identify in the rejection exactly what elements of Narkon are being referred to, we note page 9 of the answer wherein the examiner contends that it's factual and accurate that Narkon et al discloses a male connecting member capable of receiving a one piece liner member in his bearing assembly. The outer race member (14) of Narkon can be viewed as a male member in which a one piece liner member (16) is received. Narkon et al reference should be viewed as a whole and the drawings clearly show a male connecting member capable of receiving a one piece liner member which
(continued...)

examiner concludes that it would have been obvious to one of ordinary skill in the art at the time of appellant's invention to modify Wallace to include the use of a retainer member engageable with at least a portion of the inner surface of a male connecting member forming a substantially spherical inner surface including a portion of the inner surface of the male connection member in his advantageous connection assembly as taught by Narkon so as to obtain certain benefits specifically noted on page 4 of the examiner's answer.

Like appellant, our review of the patents to Wallace '679 and Narkon finds no teaching, suggestion, or motivation for a combination of the disparate devices disclosed therein (i.e., a coupling apparatus for semi-permanently connecting adjacent ends of a pair of railway cars together as in Wallace '679 and a self-aligning track roller as in Narkon) in the manner posited by the examiner. In that regard, we direct attention to pages 9-12 of the brief and pages 2-3 of the reply brief, noting our agreement

³(...continued)
cooperates with the spherical member. As long as a one piece liner can be viewed from the drawings, the reference doesn't have to mention that the liner is a single piece.

with appellant's arguments therein. Neither Wallace '679 nor Narkon disclose, teach, or suggest a male connection member in a railway car connection assembly constructed in the particular manner required by appellant's claims on appeal, wherein at least a portion of the inner surface (15) of the male connection member and the inner surface of the retainer member (21) received therein cooperate together to form a substantially spherical inner surface of the male connection member capable of retaining the substantially spherical member (42) of the connection assembly therein.

Since Narkon has no male connection member like that in Wallace '679 and the elements (14) and (16) of Narkon pointed to by the examiner make up the two piece outer race (12) of the self-aligning track roller described therein, it appears to us that appellant has correctly concluded (brief, page 11) that a combination of Wallace '679 and Narkon following the teachings of those references would, at best, merely result in the replacement of one two piece race assembly (i.e., 44 of Wallace '679) with another two piece race assembly like that shown in Narkon, and not result in any other modification of the male connection member (20) seen in Wallace '679.

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For the above reasons, we will not sustain the examiner's rejection of claims 1 through 8, 11 through 15 and 20 through 31 under 35 U.S.C. § 103(a) as being unpatentable over Wallace '679 in view of Narkon.

As for the additional rejection of claims 1 through 8, 11 through 15 and 20 through 31 under 35 U.S.C. § 103(a) as being unpatentable over Daugherety '819 in view of Narkon, since the structure of the male connection member (20) in the coupling apparatus of Daugherety '819 and the race assembly (44) received therein are essentially the same as those seen in Wallace '679, and the examiner's statement of the rejection is the same except for changing the name of the primary reference, we observe that our comments above regarding the failings of the proposed combination of Wallace '679 and Narkon apply equally well to the combination of Daugherety '819 and Narkon. Moreover, those same comments also apply with equal force to the examiner's proposed combination of Kanjo and Narkon under 35 U.S.C. § 103(a) applied against dependent claims 16 through 19 on appeal. Accordingly, the examiner's rejection of claims 1 through 8, 11 through 15 and 20 through 31 under 35 U.S.C. § 103(a) as being unpatentable over Daugherety '819 in view of Narkon and that of claims 16 through

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19 under 35 U.S.C. § 103(a) as being unpatentable over Kanjo in view of Narkon will likewise not be sustained.

The next rejections for our review are those directed to dependent claims 9 and 10 under 35 U.S.C. § 103(a) as being unpatentable over Wallace, Narkon and Bogue, and alternatively Daugherety '819, Narkon and Yamazumi. We have reviewed the teachings of both Bogue and Yamazumi, and find that we are in agreement with appellant's assessment of these rejections as set forth on pages 14-16 of the brief. Moreover, even if combined as urged by the examiner, there is nothing in the teachings of Bogue and Yamazumi which makes up for or otherwise provides response for the deficiencies in the basic combinations of Wallace and Narkon, and Daugherety '819 and Narkon, as noted above. Thus, both of these rejections will also not be sustained.

Since we are unable to sustain any of the rejections posited by the examiner, it follows that the examiner's decision to reject claims 1 through 31 of the present application under 35 U.S.C. § 103(a) is reversed.

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REVERSED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
)	
)	
CHARLES E. FRANKFORT)	
Administrative Patent Judge)	

CEF/lbg

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